

CHAPTER 9
PROCUREMENT
LEASING OF STATE LIQUOR STORES

[Ch 9, IAC 11/3/75 rescinded 3/7/79; see Ch 10]
[Prior to 10/8/86, Beer and Liquor Control Department[150]]

185—9.1(123) Scope. This chapter shall pertain to and govern the procurement policies and practices of this division in obtaining such state liquor store locations as are required to fulfill its statutory responsibilities. This chapter does not apply to the division's purchases of alcoholic beverages and wine for resale; nor does it apply to other necessary and proper procurements of goods and services for the division, such expenditures to be made in compliance with the regulations of the state general services department.

This rule is intended to implement Iowa Code subsection 123.20(3).

185—9.2(123) Procurement policy. It is the policy of the alcoholic beverage division to make all procurements of state liquor store leases as are necessary to fulfill its statutory responsibilities in the most efficient and economic manner possible. All such procurements, whether awarded on the basis of formal requests for bids or by negotiation, shall be conducted on a competitive basis. All liquor store leases shall be obtained through the formal request for bids process, unless specifically exempted by written statement of the administrator of the division for such reasons as are contained in rule 185—9.13(123), *infra*.

This rule is intended to implement Iowa Code subsection 123.20(3).

185—9.3(123) Requests for information. All requests for information and all forms, bids and other correspondence required under this chapter should be directed to the Properties Department, Alcoholic Beverages Division, 1918 S.E. Hulsizer, Ankeny, Iowa 50021. Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is (515)964-6810.

This rule is intended to implement Iowa Code subsection 123.20(3).

185—9.4(123) Bidding procedures. The division shall lease all state liquor stores by obtaining competitive bids whenever possible. Formal bids shall be solicited by one or more of the following methods:

9.4(1) Solicitations to listed bidders. Formal bids as outlined herein may be solicited through the use of a written "request for bid" form which is to be mailed to a list of bidders, lessors and developers. The "request for bid" form shall contain the following information:

- a. Due date and time of bid opening;
- b. Description of property to be leased;
- c. Directions for obtaining plans, specifications, bid forms, lease forms and other information related to the bid.

Such "request for bid" invitations shall be mailed at least 30 days prior to the date for submission of bids.

9.4(2) Publication. The division may cause to be printed, in at least one newspaper published as near as possible to the proposed liquor store site, a classified advertisement with the heading "notice to bidders." Such publication shall be made at least 30 days prior to the time set for submission of bids. The advertisement shall contain the following information:

- a. Due date and time of bid opening;
- b. Description of property to be leased;
- c. Directions for obtaining plans, specifications, bid forms, lease forms and other information related to the bid.

In addition to the formal newspaper advertisement, news releases explaining the division's intention to lease will be made to local newspapers, radio stations, chamber of commerce and the city government in communities where stores will be leased.

9.4(3) Notice to existing lessors. When it is the division's intention to solicit bids in a community where a liquor store is presently leased, the division will notify the lessor of said liquor store of those intentions not more than five working days prior to the release of the advertisements, news releases, and other mailed solicitations. All forms and instructions necessary to submit a bid will be furnished to the lessor.

This rule is intended to implement Iowa Code subsection 123.20(3).

185—9.5(123) Plans and specifications. The division shall furnish building plans and detailed specifications, approved by an architectural firm, to interested parties. Blueprints for new construction are available for a deposit of \$3 per set, which is refunded if the plans are returned in good condition within 90 days of the day the plans were mailed. Detailed specifications are available for the leasing of an existing building for a liquor store. All blueprints shall be delivered by certified mail.

This rule is intended to implement Iowa Code subsection 123.20(3).

185—9.6(123) Instructions to bidders. All bids must be submitted on the official bid form provided by the division. Bidders must prepare bid documents in the manner prescribed and furnish all information as may be requested on the bidding document. The formal bid form shall be prepared as follows:

9.6(1) Bids shall be prepared in ink or typewritten.

9.6(2) Bids will not be accepted by telephone or telegraph.

9.6(3) Unit and total costs for each separate category on the bidding document must be listed in the space provided.

9.6(4) An addendum to the bidding document must be included if a bidder wishes to submit alternate costs.

9.6(5) Bidders shall indicate the earliest date upon which the division can take occupancy of the leased premises.

9.6(6) All bids must be delivered personally or sent by certified mail to the real estate division prior to the bid opening.

This rule is intended to implement Iowa Code subsection 123.20(3).

185—9.7(123) Security. The division may require bidders to provide either a certified check, fidelity or performance bond of up to 25 percent of the annual leased cost. Security of the successful bidder will be retained in a secure place until the division takes occupancy of the building.

This rule is intended to implement Iowa Code subsection 123.20(3).

185—9.8(123) Time of submission. All bids shall be submitted in sufficient time to reach the real estate division on the day prior to the date and time set for the opening of bids. Bids received after the date and time set for opening will be returned to the bidder unopened. Bids as received by the division will be dated, showing date received.

This rule is intended to implement Iowa Code subsection 123.20(3).

185—9.9(123) Modification or withdrawal of bids. Bids may be modified or withdrawn prior to the time and date set for the opening of bids. Said modifications or withdrawals must be in writing and delivered by certified mail in a sealed envelope, properly identifying the correct bid proposal to be modified or withdrawn. After the opening of the bids, no bid may be modified or withdrawn without the express approval of the division.

This rule is intended to implement Iowa Code subsection 123.20(3).

185—9.10(123) Opening of bids. Bids shall be opened publicly and read aloud on the date and hour designated on the "request for bid" form. Bids as received are to be tabulated and the tabulation made available to all interested parties. If a satisfactory bid has been received, an award shall be made within 90 calendar days of the formal bid opening. If an award is not made within 90 calendar days, the bids shall be deemed rejected and prices as quoted by bidders shall not be deemed binding. The division's

commission may, however, grant the real estate committee permission to keep bids active past the 90-day period.

This rule is intended to implement Iowa Code subsections 123.20(2) and 123.20(3).

185—9.11(123) Selection of bids. If a satisfactory bid has been received, a lease award shall be made with that responsible bidder whose bid is most advantageous to the division. The primary factors to be considered shall include, but not be limited to, price, location, time of availability, parking, lease terms, ability to perform, energy efficiency, and general accessibility. The division shall state in writing the reasons for the selection of a particular bid in each award granted, which statement shall be retained with the lease and supplied to each bidder who shall request a copy.

9.11(1) Rejection of bids. The division has the right to reject any or all bids. The division may repeat the entire bidding procedure at such time as it deems necessary. The division shall state in writing the reasons for the rejection of a particular bid in each award granted, which statement shall be retained with the lease and supplied to each bidder who shall request a copy.

9.11(2) Minor deficiencies and informalities. The division reserves the right to waive minor deficiencies and informalities if in its judgment the best interest of the state of Iowa will be served.

9.11(3) Site inspection. Each bid site will be inspected by a representative of the division after opening of bids and prior to making a bid award.

9.11(4) Formal bid award. Determination of all bid awards will be made by the alcoholic beverages division.

9.11(5) Treatment of low bids. The division will make every effort to make the bid award to the lowest bidder, although it is not required to accept the lowest bid.

This rule is intended to implement Iowa Code sections 123.20 and 123.21.

185—9.12(123) Bidder list—eligibility. Any person may request to be placed on a liquor store lease bidders list. Such person must notify the division in writing that they wish to be placed on the bidders list. The division shall maintain a current bidders list and mail to such parties all “request for bid” forms.

9.12(1) Removal. A bidder may be removed from the bidders list for any of the following reasons:

- a. Failure to respond at least once to a “request for bid” during a one-year period.
- b. Attempt by bidder to influence the decision of any state employee involved in the leasing of liquor stores.
- c. If the administrator of the division has reasonable grounds to believe that there is an agreement by bidders to restrain competitive bidding, by any means, the bids of those bidders will be rejected and their names removed from the list.
- d. A bidder may be removed from a list if the Iowa civil rights commission has determined that the bidder has maintained discriminatory employment practices.

9.12(2) Reserved.

This rule is intended to implement Iowa Code subsection 123.20(3).

185—9.13(123) Negotiated procurements. If lease procurement through formal bidding is not feasible or practicable, the division may enter into a lease by negotiation.

9.13(1) Conditions requiring negotiation. Leases may be negotiated under the following conditions:

- a. If determined to be necessary in the public interest during a period of natural disaster or emergency for a temporary period not to exceed one year.
- b. If bids or quotations have been solicited and no response has been received.
- c. If it is determined that the bid prices submitted after advertising or solicitation of quotations have not been independently arrived at.
- d. If it is determined that the bid price or location submitted after advertising or solicitation of quotations are not reasonable to the division.

e. * If it is determined that it is to the division's advantage to negotiate a renewal lease for an existing liquor store for up to two additional terms, each not to exceed five years.

9.13(2) *Statement of justification.* In each instance where a lease is obtained by negotiation, a written statement shall be prepared giving the reasons why it was infeasible or impractical to utilize formal bidding. The statement shall be maintained with the lease record.

This rule is intended to implement Iowa Code subsections 123.20(2) and 123.20(3).

185—9.14(123) *Impossibility of performance.* When a party contracting to do business with the division has its operations disrupted by a strike, walkout, act of God, or some condition which makes performance temporarily impossible, it shall be the responsibility of that party to notify the division immediately. In such instances, the division shall attempt to grant such reasonable extensions in the time for performance.

This rule is intended to implement Iowa Code subsection 123.20(3).

185—9.15(123) *Assignment of leases.* A party who has received a lease award may not assign such lease to another party without the written permission of the division.

This rule is intended to implement Iowa Code subsection 123.20(3).

185—9.16(123) *Bidders appeal.* Any bidder, whose bid has been timely filed, and who is aggrieved by the award of the alcoholic beverages division, may appeal the decision by filing a written appeal to the chairperson of the Alcoholic Beverages Commission, 1918 S.E. Hulsizer, Ankeny, Iowa 50021, within seven days of the receipt of the written notice from the division that the bid was not accepted by the division, exclusive of Saturdays, Sundays, and legal holidays.

This rule is intended to implement Iowa Code sections 123.4, 123.20 and 123.21.

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[Editorially transferred from [150] to [185], IAC Supp. 10/8/86; see IAB 7/3/86]

OBJECTION

At its March 11, 1985, meeting the administrative rules review committee objected to subrule 9.13(1), paragraph “e,” appearing in the Iowa Administrative Code, on the grounds that it is unreasonable. This paragraph appears in IAB Volume VII, Number 17 (2-13-85) as part of ARC 5305.

The paragraph empowers the department to negotiate rather than bid out the renewal of liquor store leases for up to two additional terms. It is the opinion of the committee that open bidding is the preferred method to obtain leases, except in those rare circumstances where a property is so desirable that an appropriate substitute does not exist. The other provisions of subrule 9.13(1) already allow the negotiation of bids in several specific circumstances. Paragraph “e” is more general, allowing negotiations for lease renewals under almost any circumstance. The committee believes that this is an unnecessary “blank check” which could well remove all lease renewals from the bidding process.

*Objection filed 3/11/85, see “Objection” at the end of this chapter.

**Effective date (2/9/83) of 9.11(4) and 9.16 delayed seventy days by the Administrative Rules Review Committee.